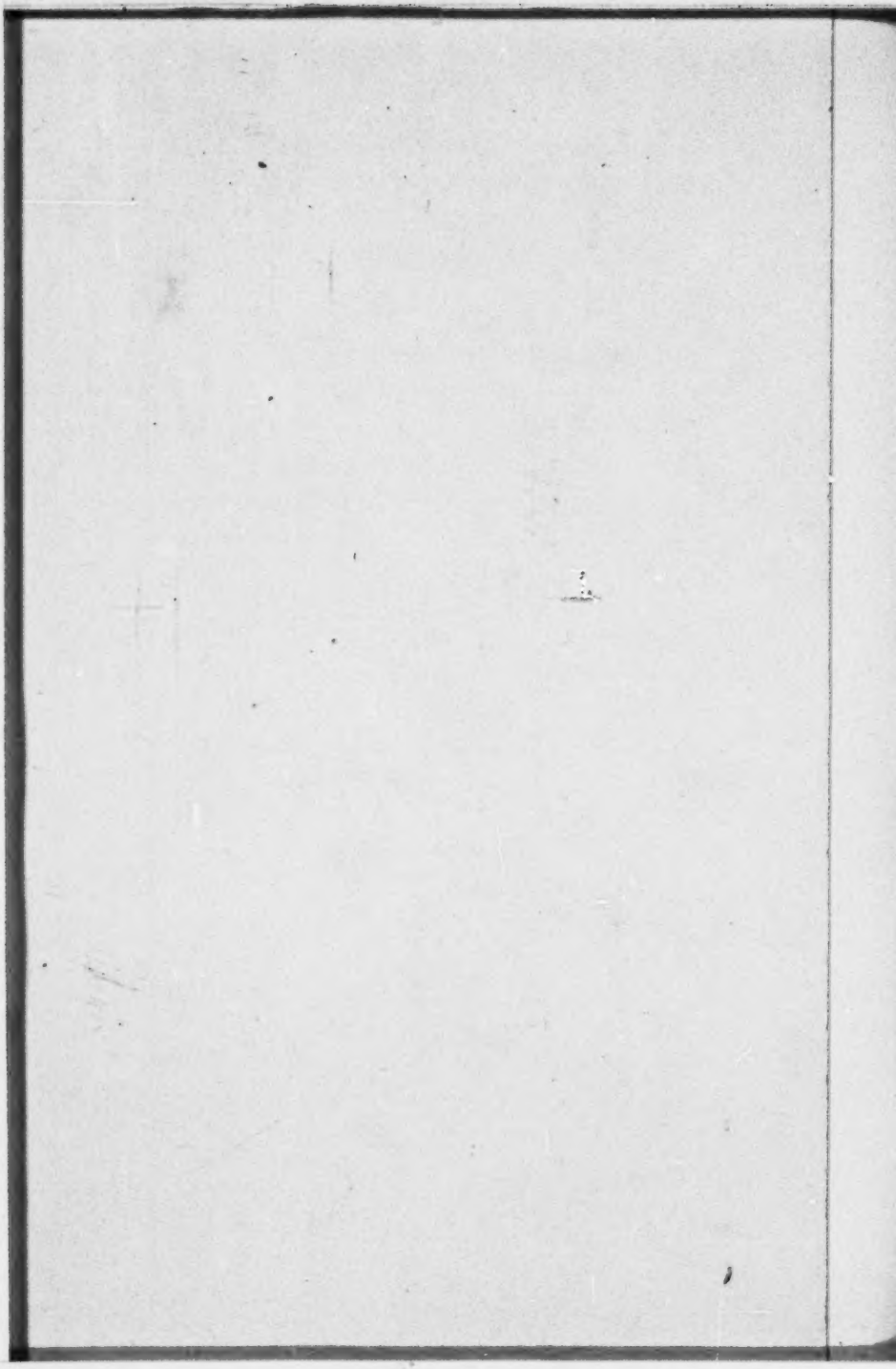

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 3.

CORNING GLASS WORKS, *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA,
Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

REPLY OF CORNING GLASS WORKS TO GOVERNMENT'S PETITION FOR CLARIFICATION OR RECONSIDERATION.

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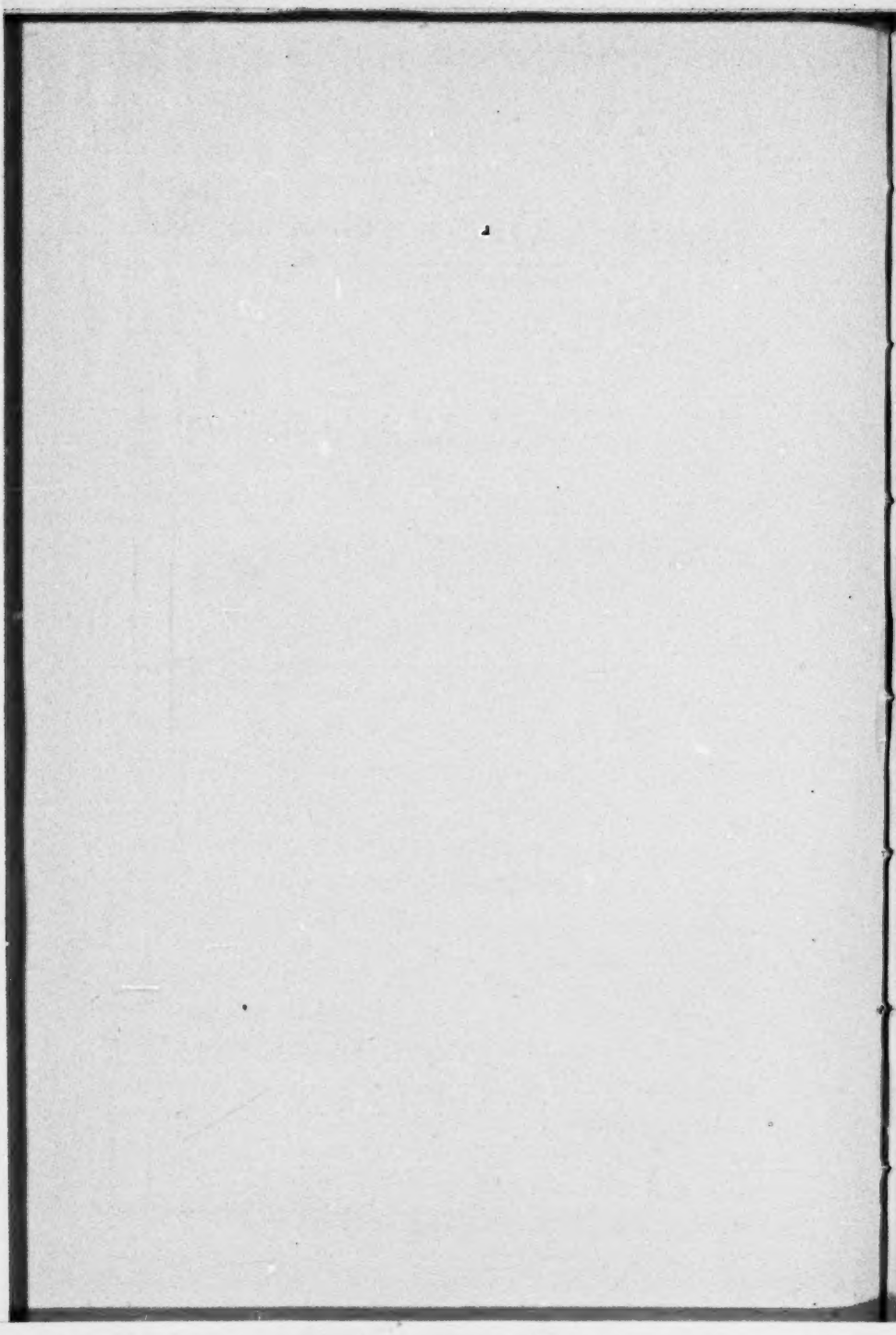

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Corning Glass Works makes this reply to the Government's petition solely in order to show that the position there taken relative to the status to be accorded to Corning's machines is contrary to the Court's decision.

The Government's petition urges that the definition "machinery used in the manufacture of glassware" contained in Paragraph 1(F) of the present judgment should determine the scope of Paragraph 24, the compulsory licensing paragraph of the present judgment. The Government ignores the fact that the definition has been modified by the Court so far as the scope of the compulsory licensing provisions of the judgment are concerned (Gov't Petition, pp. 10-11).

In defining the scope of the compulsory licensing provisions of the final judgment as it is to be revised, the opinion of the Court states that compulsory licensing "*should be restricted* to feeders, formers, stackers and lehrs and patents covering these or improvements of them, or methods or processes used in connection with them." (Op., p. 21.) (Italics added.)

It seems entirely clear that, in so confining the scope of compulsory licensing, the Court intentionally did not use the term "machinery used in the manufacture of glassware" as defined in Paragraphs 1 (F), (G), (H), (I), (J) and (K) of the judgment. The definitions set forth in these paragraphs include Corning's ribbon machine and other specialized non-container machinery.

The following portions of the opinion, however, show that the Court could not have intended to subject these specialized machines to compulsory licensing.

1) Corning terminated its cross-license with Hartford in 1940. The Court has expressly upheld that cancellation (Op., p. 25). It is to be noted that with respect to the container defendants, the Court has ruled that their license and cross-license agreements should remain in effect and that provisions inconsistent with the Court's opinion must be eliminated (Op., p. 23).*

2) Further, the Court has held that the transfer in 1940 of the three patents from Hartford to Corning (two of which have expired and the third of which is to be dedicated to the public) was not illegal. The opinion states:

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* The opinion of the Court (p. 13) refers to *Standard Oil Co.* v. *United States,* 283 U. S. 163, where the Court stated that where an industry is dominated, or interstate commerce directly restrained, the Sherman Act requires "*cross-licensing patentees* to license at reasonable rates others engaged in interstate commerce" (283 U. S. 163, 172). (Italics added.)

> "It does not appear that the ownership of this patent [the surviving patent] by Corning would tend to perpetuate or create any improper monopoly or patent pool." (Op., p. 24.)

3) The Court has also held that the ribbon machine was never a part of a combination of patents. Thus the Court states:

> "There is no claim that the ribbon machine patent was ever part of a combination of patents." (Op., p. 24 fn.)

Therefore, it seems that the Court did not include the ribbon machine or Corning's other specialized non-container machines in its specification of feeders, formers, stackers and lehrs, which are to be subjected to compulsory licensing.

Corning respectfully submits that the Government's petition to extend the compulsory licensing provisions of the judgment to all "machinery used in the manufacture of glassware" is squarely contrary to the express direction of the Court at page 21 of the opinion and should be denied.

Respectfully submitted,

Boykin C. Wright,
Attorney for Corning Glass Works.